

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

	)	
1960 SUPERFINE LANE OWNERS	)	
ASSOCIATION,	)	
	)	
Plaintiff,	)	
v.	)	C.A. No. N19J-04238
	)	
DEMETRIOS HARONIS and	)	
IRIS MCCARTHY,	)	
	)	
Defendants.	)	

Submitted: December 9, 2020  
Decided: December 28, 2020

**Defendant Iris McCarthy's Motion to Set Aside Sheriff's Sale – DENIED**

**Defendant Demetrios Haronis' Motion to Stay Confirmation of Sale Pending  
Determination of Reasonableness of Attorney's Fees – DENIED**

**Plaintiff's Motion to Strike Defendant Haronis' Motion to Stay Confirmation  
of Sale Pending Determination of Reasonableness of Attorney's Fees –  
DENIED**

**Richard L. Abbott, Esquire's Motion to Withdraw As Counsel – GRANTED**

**MEMORANDUM OPINION**

Michael P. Morton, Esquire; Morton, Valihura & Zerbato, LLC, 3704 Kennett Pike, Suite 200, Greenville, DE 19807. Attorney for Plaintiff.

Richard L. Abbott, Esquire; Abbott Law Firm, 724 Yorklyn Road, Suite 240, Hockessin, DE 19707. Attorney for Defendant Iris McCarthy.

Amy D. Brown, Esquire; Gellert Scali Busenkell & Brown, LLC, 1201 North Orange Street, Suite 300, Wilmington, DE 19801. Attorney for Defendant Demetrios Haronis.

**CARPENTER, J.**

Before the Court is (1) Defendant Iris McCarthy's Motion to Set Aside Sheriff's Sale, (2) Defendant Demetrios Haronis' Motion to Stay Confirmation of Sale Pending Determination of Reasonableness of Attorney's Fees, (3) Plaintiff's Motion to Strike Defendant Haronis' Motion to Stay Confirmation of Sale Pending Determination of Reasonableness of Attorney's Fees, and (4) Richard L. Abbott, Esquire's Motion to Withdraw As Counsel. For the reasons set forth in this Opinion, Defendant Iris McCarthy's Motion to Set Aside Sheriff's Sale is **DENIED**, Defendant Demetrios Haronis' Motion to Stay Confirmation of Sale Pending Determination of Reasonableness of Attorney's Fees is **DENIED**, Plaintiff's Motion to Strike Defendant Haronis' Motion to Stay Confirmation of Sale Pending Determination of Reasonableness of Attorney's Fees is **DENIED**, and Richard L. Abbott, Esquire's Motion to Withdraw As Counsel is **GRANTED**.

## **I. Factual & Procedural Background**

This litigation arises from a default judgment ("Judgment") awarded to Plaintiff for unpaid Homeowner's Association (HOA) fees.<sup>1</sup> Plaintiff is the Homeowners' Association for the condominiums located on 1960 Superfine Lane in Wilmington, DE.<sup>2</sup> Defendant Haronis ("Haronis") and Defendant McCarthy

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<sup>1</sup> Def. Iris McCarthy's Mot. to Set Aside Sheriff's Sale ¶ 1, at 1; Def. Haronis' Mot. to Stay Confirmation of Sale Pending Determination of Reasonableness of Att'y's Fees ¶ 11, at 3 [hereinafter "Def. Haronis' Mot. to Stay Confirmation of Sale"]; Pl.'s Resp. to Def.'s Mot. to Avoid Confirmation and Set Aside Sheriff's Sale ¶ 3, at 1 [hereinafter "Pl.'s Resp. to Def. McCarthy's Mot."].

<sup>2</sup> Pl.'s Resp. to Def. McCarthy's Mot. ¶ 1, at 1.

(“McCarthy” or jointly as “Defendants”) are co-owners of a condominium (“the Property” or “the Condominium”) at the respective location.<sup>3</sup> Defendants failed to pay HOA fees associated with the Property for a length of time that resulted in a \$4,004.69 bill.<sup>4</sup>

It appears uncontested that Haronis originally purchased the Condominium in 2014 for the amount of \$60,000.<sup>5</sup> The Defendants were in a romantic relationship at the time and McCarthy was subsequently added to the deed.<sup>6</sup> At some point in time, the romantic relationship ended with McCarthy continuing to reside in the Condominium.<sup>7</sup> HOA bills were forward to the Condominium and not paid by McCarthy.<sup>8</sup> There are also tax liens against the Property totaling over \$21,000.<sup>9</sup>

After being awarded Judgment on October 29, 2018,<sup>10</sup> Plaintiff filed for a writ of levy against McCarthy.<sup>11</sup> In execution of the writ, the sheriff visited the Property on three separate occasions.<sup>12</sup> During the execution, the sheriff successfully levied

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<sup>3</sup> Def. Haronis’ Mot. to Stay Confirmation of Sale ¶ 1, at 1; Def. Iris McCarthy’s Mot. to Set Aside Sheriff’s Sale ¶ 2, at 1. Defendant Haronis claims Defendants are joint tenants with the right of survivorship, and Defendant McCarthy asserts Defendants are tenants in common. Although the form of ownership is in dispute, this does not interfere with the Court’s ability to render a decision.

<sup>4</sup> Def. Haronis’ Mot. to Stay Confirmation of Sale, Ex. A.

<sup>5</sup> Def. Haronis’ Mot. to Stay Confirmation of Sale ¶ 4, at 2.

<sup>6</sup> *Id.* at ¶ 3, at 1; ¶ 6, at 2.

<sup>7</sup> *Id.* at ¶¶ 7, 8, at 2.

<sup>8</sup> *Id.* at ¶ 9, at 2-3.

<sup>9</sup> Def. Haronis’ Resp. and Obj. to Def. McCarthy’s Mot. to Set Aside Sheriff’s Sale, Ex. A [hereinafter, “Def. Haronis’ Resp. to Def. McCarthy”].

<sup>10</sup> Tr. of J.P. Ct. J., D.I. 1, at 1.

<sup>11</sup> Pl.’s Resp. to Def. McCarthy’s Mot., Ex. A, at 2.

<sup>12</sup> *Id.* at 3.

McCarthy's vehicle.<sup>13</sup> However, the vehicle could not satisfy the Judgment because it was encumbered by an existing lien.<sup>14</sup>

On December 4, 2018, the writ of levy was returned as complete.<sup>15</sup> Shortly after, on January 25, 2019, McCarthy filed for bankruptcy.<sup>16</sup> Consequently, McCarthy's bankruptcy proceeding stayed all actions to enforce the Judgment against both Defendants.<sup>17</sup> During the bankruptcy proceeding, McCarthy was placed on a payment plan for Plaintiff's Judgment.<sup>18</sup> However, by August of 2019, McCarthy defaulted on the payment plan and on September 20, 2019, Plaintiff transferred its Judgment to the Superior Court of Delaware.<sup>19</sup> About two weeks later, Plaintiff filed a praecipe for writ of *fierī facias*,<sup>20</sup> which was issued and directed the sheriff to levy and sell the goods and chattels as well as lands and tenements of Defendants.<sup>21</sup>

On February 10, 2020, a day before the sheriff's sale, Haronis filed an Emergency Motion to Stay Sheriff's Sale, which this Court denied.<sup>22</sup> Proceeding with the sale, Plaintiff and Haronis' counsel—acting as Haronis' agent—were the

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<sup>13</sup> *Id.*

<sup>14</sup> See Pl.'s Resp. to Def. McCarthy's Mot. ¶ 4, at 2.

<sup>15</sup> Tr. of J.P. Ct. J., D.I. 1, at 1.

<sup>16</sup> Def. Haronis' Mot. to Stay Confirmation of Sale, Ex. C, U.S. Bankruptcy Ct. Docket, at 1.

<sup>17</sup> Oral Argument, Zoom Court Scribes (July 29, 2020).

<sup>18</sup> Def. Haronis' Mot. to Stay Confirmation of Sale ¶ 14, at 4.

<sup>19</sup> Tr. of J.P. Ct. J., D.I. 1, at 1.

<sup>20</sup> Praecipe for Writ of *Fieri Facias*, D.I. 2, at 1.

<sup>21</sup> Praecipe for Writ of *Fieri Facias* Issued, D.I. 3, at 1.

<sup>22</sup> Super. Ct. Proceeding Worksheet, Emergency Mot. to Stay Sheriff's Sale, D.I. 12, at 1.

only two bidders present.<sup>23</sup> Haronis placed the winning bid at \$66,000.<sup>24</sup> In March of 2020, McCarthy filed a Motion to Set Aside Sheriff's Sale. Subsequently, Haronis filed a Motion to Stay Confirmation of Sale Pending Determination of Reasonableness of Attorney's Fees.

In July of 2020, Plaintiff filed a Motion to Strike Haronis' Motion to Stay Confirmation of Sale because Haronis' motion exceeds the six page limit prescribed by the Superior Court Rules of Civil Procedure.<sup>25</sup> The Court notes that Plaintiff's response to Haronis' motion also exceeds the six page limit. Because the Court finds no prejudice and for the sake of judicial economy, the Court denies Plaintiff's Motion to Strike.<sup>26</sup> Also, on December 9, 2020, McCarthy's counsel filed a Motion to Withdraw As Counsel. After having thoroughly read all motions and responses, the Court will first address Haronis' motion on its merits.

## **II. Set Aside Sheriff's Sale**

### **A. Standard of Review**

This Court has broad discretion to confirm or set aside a sheriff's sale, and the

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<sup>23</sup> Def. Haronis' Mot. to Stay Confirmation of Sale ¶ 29, at 7.

<sup>24</sup> *Id.*

<sup>25</sup> Del. Super. Ct. Civ. R. 78(b).

<sup>26</sup> *See Di's, Inc. v. McKinney*, 673 A.2d 1199, 1202 (Del. 1996) (holding that the Delaware Supreme Court "adopted the 'modern view' that, where possible and where there is no prejudice, appeals should not be dismissed on technicalities.").

Court's decision will be upheld absent an abuse of discretion.<sup>27</sup> This Court has an "inherent equitable power to control the execution process."<sup>28</sup> When reviewing a sheriff's sale, it is the Court's responsibility to "protect the affected parties from injury or injustice."<sup>29</sup> The Court must not "arbitrarily or capriciously refuse to confirm a sale, where there are no irregularities in the sale proceedings and no fraud, unfairness, or other extraneous matter demonstrating unfairness to one of the interested parties is shown."<sup>30</sup> In making its decision, the Court may consider inadequacy of price, "[f]raud, mistake, accident, impropriety, misconduct, surprise or irregularity in the sale process."<sup>31</sup>

## **B. Discussion**

As it stands, McCarthy presents the Court with two issues. First, she contends that the sheriff's sale should be set aside because "Plaintiff failed to exhaust efforts to collect upon the Judgment via a goods and chattels sale of the Defendants' 'personal estate'."<sup>32</sup> Second, this Court is asked to resolve an unprecedented question: can a property owner bid at a sheriff's sale, either himself or through an

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<sup>27</sup> *Burge v. Fid. Bond & Mortg. Co.*, 648 A.2d 414, 420 (Del. 1994) (citing 2 Victor B. Woolley, Woolley's Practice in Civil Actions, § 1108 (1906)); *Shipley v. New Castle Cty.*, 975 A.2d 764, 767 (Del. 2009).

<sup>28</sup> *LSF9 Master Participation Tr. v. Truitt*, 2017 WL 8787509, at \*1 (Del. Super.) (quoting *Burge v. Fid. Bond & Mortg. Co.*, 648 A.2d 414, 420 (Del. 1994)).

<sup>29</sup> *Id.*

<sup>30</sup> *Burge*, 648 A.2d at 420.

<sup>31</sup> *Id.* at 419. (citing 59 C.J.S. *Mortgages* § 744).

<sup>32</sup> Def. Iris McCarthy's Mot. to Set Aside Sheriff's Sale ¶ 8, at 2-3.

agent, to retain title of his property? McCarthy argues that a property owner is disqualified from bidding and thus is asking the Court to set aside the sheriff's sale where Haronis—a codebtor and co-owner of the Property—was the successful bidder.<sup>33</sup>

The Court notes that in McCarthy's motion she argues that the sheriff's sale should be set aside because the sale price was inadequate.<sup>34</sup> However, during oral argument, McCarthy's counsel informed the Court that McCarthy was withdrawing this argument and therefore the Court will not address it.<sup>35</sup>

### **1. Collection Upon Judgment**

In arguing that the sheriff's sale should be set aside because Plaintiff failed to exhaust all efforts to collect its Judgment, McCarthy relies on Title 10 Delaware Code § 4901 and *Comegys v. Phillips*.<sup>36</sup> Specifically, McCarthy asserts that under section 4901 Plaintiff was required to levy, take an inventory, or sell personal property for both Defendants before moving for a sheriff's sale.<sup>37</sup> McCarthy

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<sup>33</sup> *Id.* ¶ 10, at 3.

<sup>34</sup> *Id.* at ¶ 9, at 3.

<sup>35</sup> Oral Argument, Zoom Court Scribes (July 29, 2020). During oral argument, McCarthy's counsel also argued that the Court should ignore the bankruptcy documents presented by Plaintiff and Haronis, which demonstrate that there was an automatic stay preventing Plaintiff from levying Defendants' property. McCarthy's counsel claims that they were not put on notice of the bankruptcy documents. The Court will not entertain this argument, because the bankruptcy documents were marked as Exhibit C in Defendant Haronis' Motion to Stay Confirmation Pending Determination of Reasonableness of Attorney's Fees and filed with this Court. Moreover, McCarthy's counsel should not have been surprised that his client's bankruptcy proceeding, regardless of whether counsel filed the bankruptcy claim, could impact the outcome of this case.

<sup>36</sup> Def. Iris McCarthy's Mot. to Set Aside Sheriff's Sale ¶¶ 4, 5, 8, at 2-3.

<sup>37</sup> *Id.* ¶¶ 4, 8, at 2-3; Oral Argument, Zoom Court Scribes (July 29, 2020).



contends that Plaintiff did not attempt to levy any of Haronis' personal property and maintains that Plaintiff did not sufficiently complete the levy process with respect to her personal property.<sup>38</sup> This claim is based upon Plaintiff not submitting a return of nulla bona proving that the execution to levy on goods and chattels was unfruitful.<sup>39</sup> Because of Plaintiff's alleged failure to sufficiently execute upon personal property, McCarthy argues that under *Comegys v. Philips* the sheriff's sale must be set aside.<sup>40</sup>

To the contrary, Plaintiff argues that it levied upon McCarthy's personal estate to the furthest possible extent.<sup>41</sup> Plaintiff asserts that it made two goods and chattels levy requests, which resulted in a levy on McCarthy's vehicle.<sup>42</sup> However, Plaintiff was unable to sell the levied vehicle because it was encumbered by a previously existing lien.<sup>43</sup> Plaintiff also claims that "the Constable made four (4) prior attempts between November 26, 2018 and December 4, 2018 to levy goods and chattels without success."<sup>44</sup> Moreover, Plaintiff argues that it requested another "levy on goods and chattels as well as on lands and tenements" on October 15, 2019 that was also unsuccessful.<sup>45</sup> Plaintiff notes that its last unsuccessful levy request prompted its Judgment to be attached to the Property.<sup>46</sup> Plaintiff contends that this is sufficient

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<sup>38</sup> Oral Argument, Zoom Court Scribes (July 29, 2020).

<sup>39</sup> *Id.*

<sup>40</sup> See Def. Iris McCarthy's Mot. to Set Aside Sheriff's sale ¶¶ 5, 8, at 2-3.

<sup>41</sup> Oral Argument, Zoom Court Scribes (July 29, 2020).

<sup>42</sup> Pl.'s Resp. to Def. McCarthy's Mot. ¶ 11, at 3-4.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* ¶ 12, at 4.

<sup>46</sup> *Id.*

to satisfy what § 4901 prescribes.<sup>47</sup>

With respect to Haronis, Plaintiff argues that Haronis is not a resident of Delaware and thus Plaintiff could not access his personal property.<sup>48</sup> Additionally, Plaintiff asserts that it was barred from levying on Haronis' personal property because McCarthy filed for bankruptcy which resulted in an automatic stay on all levy procedures for both Defendants.<sup>49</sup> Haronis agrees with Plaintiff and argues that the sheriff's sale was lawful.<sup>50</sup>

§ 4901 provides the following:

Lands, tenements and hereditaments and all right of dower and curtesy therein *when no sufficient personal estate can be found* may be seized and sold upon judgment and execution obtained.<sup>51</sup>

On its face, § 4901 permits a judgment holder to initiate a sale of a defendant's real property only when no adequate personal property can be located to satisfy the debt.<sup>52</sup> In this case, Defendants' did not have sufficient personal property to satisfy Plaintiff's Judgment.

Specifically, the sheriff attempted to gain access to the Property five times within the span of two weeks, even visiting the Property twice in one day.<sup>53</sup> During the execution, the sheriff successfully levied McCarthy's vehicle.<sup>54</sup> However,

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<sup>47</sup> Oral Argument, Zoom Court Scribes (July 29, 2020).

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*; Def. Haronis' Resp. to Def. McCarthy ¶¶ 5-6, 10-12, at 3, 4-5.

<sup>51</sup> 10 *Del. C.* § 4901 (emphasis added).

<sup>52</sup> *Comegys v. Phillips*, 69 A.2d 294, 295 (Del. Super. Ct. 1949).

<sup>53</sup> Pl.'s Resp. to Def. McCarthy's Mot., Ex. A, at 3.

<sup>54</sup> *Id.*

during this time, the sheriff attempted and was unsuccessful in gaining entry into the Condominium.<sup>55</sup> Although Plaintiff levied McCarthy's vehicle, Plaintiff's Judgment was not satisfied because the vehicle was encumbered.<sup>56</sup>

Title 10, Chapter 49, of the Delaware Code on Execution, and particularly § 4901, does not require what McCarthy is demanding.<sup>57</sup> The Delaware Code does not specifically obligate Plaintiff to exhaust all possible avenues to determine that Defendants do not have any valuable personal property to levy. Moreover, McCarthy does not provide any Delaware case law that supports her proposition. The Court notes that a judgment creditor, "[i]n aid of the judgment or execution...*may* take discovery by deposition, interrogatories and requests for production," but is not mandated to do so.<sup>58</sup> In fact, it is standard practice for a judgment creditor to attempt to satisfy its debt by requesting that the sheriff levy on goods and chattels.<sup>59</sup> The sheriff must then exercise due diligence in executing the levy by making a proper inquiry into a defendant's personal estate.<sup>60</sup> After the levy is returned and no sufficient personal property to satisfy the judgment is found, a judgment creditor may then file for a lien on real property.<sup>61</sup>

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<sup>55</sup> *Id.*

<sup>56</sup> Pl.'s Resp. to Def. McCarthy's Mot. ¶ 11, at 4.

<sup>57</sup> See 10 Del. C. §§ 4901-4916.

<sup>58</sup> Del. Super. Ct. Civ. R. 69 (emphasis added).

<sup>59</sup> First State Judiciary, *How to Collect and/or Revive a Judgment in the Justice of the Peace Court*, at <https://courts.delaware.gov/help/judgments/jp-revive.aspx> (last visited December 13, 2020).

<sup>60</sup> *State v. Porter*, 1 Del. 126, 126 (Super. Ct. 1832); *Cake v. Cannon*, 7 Del. 427, 427 (Super. Ct. 1862).

<sup>61</sup> First State Judiciary, *How to Collect and/or Revive a Judgment in the Justice of the Peace Court*, at <https://courts.delaware.gov/help/judgments/jp-revive.aspx> (last visited December 13, 2020); First State Judiciary,

McCarthy does not contest the sheriff's efforts in execution. Rather, McCarthy contends that because a nulla bona was not returned, Plaintiff failed to properly collect upon McCarthy's personal estate. The Court disagrees. "A return of nulla bona signifies that the officer made a strict and diligent search and was unable to find any personal property of the defendant subject to levy under the writ."<sup>62</sup> However, if the sheriff finds personal property, regardless of its sufficiency to satisfy the judgment, the sheriff returns a successful levy.<sup>63</sup> The plain language of § 4901 anticipates the latter scenario and, again, allows real property to be seized "when no *sufficient* personal estate can be found."<sup>64</sup>

Here, a return of nulla bona would have been inappropriate because McCarthy's vehicle was levied; however, the levied vehicle could not satisfy Plaintiff's Judgment. In sum, considering Plaintiff's three writs of levy, the sheriff's several attempts to enter the Property, and his unfruitful levy on McCarthy's vehicle, the Court finds that no sufficient personal estate could be found. Thus, the Court finds that Plaintiff did enough to satisfy § 4901 with regard to McCarthy.

The Court also finds that Plaintiff satisfied § 4901 with respect to Haronis. It is bedrock law that each state has exclusive jurisdiction over property within its

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*Judgments in the Court of Common Pleas*, at <https://courts.delaware.gov/help/judgments/ccp.aspx> (last visited December 13, 2020).

<sup>62</sup> 30 Am. Jur. 2d *Executions, Etc.* § 208 (2020).

<sup>63</sup> See Pl.'s Resp. to Def. McCarthy's Mot., Ex. A, at 1.

<sup>64</sup> 10 Del. C. § 4901 (emphasis added).

borders.<sup>65</sup> McCarthy does not contest that Haronis is a resident of New Jersey and only has a connection to Delaware through his ownership interest in the Condominium.<sup>66</sup> Consequently, Haronis does not have personal property within Delaware's borders that could be levied and McCarthy does not argue otherwise. The Court notes that § 4901 does not require Plaintiff to chase Haronis across state lines in search of personal property to satisfy its Judgment.

Furthermore, the Court finds the case McCarthy relies on does not stand for the proposition she argues. In *Comegys v. Phillips*, the plaintiff falsely advised the sheriff that the defendant did not have personal property to levy.<sup>67</sup> Relying on the plaintiff's representation, the sheriff returned a nulla bona and the defendant's real property was subsequently sold at auction.<sup>68</sup> The *Comegys* court set aside the sheriff's sale because (1) the defendant had sufficient personal property to satisfy the debt, (2) the plaintiff did not follow the proper process that allows for the discovery of personal property, and (3) the plaintiff did not direct the sheriff to attempt to find the defendant's personal property.<sup>69</sup>

*Comegys* is factually distinct from this case. Unlike *Comegys*, there was no irregularity in the process. Plaintiff followed the proper process by filing a writ of

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<sup>65</sup> *McLaughlin v. Bahre*, 35 Del. 446, 455 (Super. Ct. 1933) (citing *Ownbey v. Morgan*, 256 U.S. 94, 41 (1921)).

<sup>66</sup> See Def. Iris McCarthy's Mot. to Set Aside Sheriff's Sale.

<sup>67</sup> *Comegys*, 69 A.2d at 294.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.* at 296.

levy which directed the sheriff to search for McCarthy's personal property. The sheriff was only able to find McCarthy's encumbered vehicle as he could not gain entry into the Condominium even after numerous attempts. Additionally, there was no discoverable property with respect to Haronis because he is not a resident of Delaware and does not live on the Property. Indeed, McCarthy does not argue, as in *Comegys*, that Haronis has personal property in Delaware that could satisfy Plaintiff's Judgment.

The Court also finds McCarthy's argument that Plaintiff should have done more to levy Defendants' personal property unconvincing. Shortly after the sheriff returned its findings to Plaintiff, McCarthy filed for bankruptcy.<sup>70</sup> Plaintiff correctly explains that McCarthy's bankruptcy proceeding instituted an automatic stay, which prohibits "any act to create, perfect, or enforce any lien against property of the estate."<sup>71</sup> Moreover, the automatic stay equally applies to codebtors and "comes into effect automatically when a Chapter 13 petition is filed."<sup>72</sup>

A codebtor is an individual who shares responsibility with the debtor for the debts subject to the bankruptcy proceeding.<sup>73</sup> Plaintiff's Judgment was subject to McCarthy's bankruptcy proceeding,<sup>74</sup> and because Haronis was also liable for

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<sup>70</sup> Def. Haronis' Mot. to Stay Confirmation of Sale, Ex. C, U.S. Bankruptcy Ct. Docket, at 1.

<sup>71</sup> 11 U.S.C. § 362(a)(4); *Bell v. Fisher*, 2011 WL 6400277, at \*2 (Del. Super.) ("Acts taken in violation of the automatic stay are void.") .

<sup>72</sup> 11 U.S.C. § 1301(a); *In re Morris*, 385 B.R. 823, 828 (E.D. Va. 2008).

<sup>73</sup> 11 U.S.C. § 1301(a).

<sup>74</sup> See Def. Haronis' Mot. to Stay Confirmation of Sale, Ex. C, U.S. Bankruptcy Ct. Docket; Def. Haronis' Mot. to Stay Confirmation of Sale ¶ 14 at 4.

Plaintiff's Judgment, Haronis was a codebtor. As a result, Plaintiff was legally barred from taking any other recourse against both Defendants until the bankruptcy court granted leave.

Not only does the Court find that § 4901 does not require an exhaustive undertaking as described by McCarthy, the Court believes that Plaintiff attempted to seize Defendants' personal property to the extent required. In light of the writ of levy issued for McCarthy, Haronis' residential status, and McCarthy's bankruptcy proceeding, the Court finds that Plaintiff satisfied § 4901. Therefore, the Court will not set aside the sheriff's sale for failure to properly collect upon judgment.

## **2. Property Owner as Purchaser at Sheriff's Sale**

As there is no Delaware law on whether property owners can bid at a sheriff's sales to retain title, McCarthy cites *Woolley on Delaware Practice* to support her argument that property owners are disqualified from purchasing their property back.<sup>75</sup> McCarthy reasons that allowing a property owner to bid at a sheriff's sale would permit an owner to "intentionally cause a Sheriff's Sale by the first lienholder as a device to extinguish significant junior liens."<sup>76</sup> In essence, McCarthy suggests that property owners could defraud junior lien holders.<sup>77</sup> Plaintiff contends that

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<sup>75</sup> Def. Iris McCarthy's Mot. to Set Aside Sheriff's Sale ¶ 10, at 3 (citing 2 *Woolley on Delaware Practice* § 1118).

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

McCarthy is misinterpreting *Woolley*.<sup>78</sup> Plaintiff argues that *Woolley* does not bar a bona-fide purchaser—like Haronis—from bidding at a sheriff’s sale.<sup>79</sup> Rather, Plaintiff asserts that *Woolley* specifically prohibits the auctioneer conducting the sheriff’s sale from bidding on the property because this poses a conflict of interest.<sup>80</sup>

Plaintiff emphasizes that there is no case law or secondary source that forbids owners from reclaiming their property at a sheriff’s sale.<sup>81</sup> Plaintiff argues that without a defect in notice and without evidence of fraud, mistake, or misconduct, the sheriff’s sale must be honored.<sup>82</sup> Plaintiff also notes that all lien holders in this case received notice of the sale and could have bid on the property to protect their interest.<sup>83</sup> Moreover, Plaintiff argues that the purchase price here covers all debts and thus no parties are harmed by the sale.<sup>84</sup> Instead, if the sale is set aside, Plaintiff explains that it will be prejudiced because Defendants’ debt will continue to accrue and the other condominium owners will have to continue paying for litigation costs via their Homeowners’ Association fees.<sup>85</sup>

The section of *Woolley* that McCarthy relies on reads as follows:

Misconduct on the part of the plaintiff or purchaser or office conducting the sale, constitutes a reason for setting aside the sale. Thus if a sheriff or

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<sup>78</sup> Pl.’s Resp. to Def. McCarthy’s Mot. ¶ 15, at 5.

<sup>79</sup> *Id.* ¶ 15, at 6.

<sup>80</sup> *Id.*

<sup>81</sup> Oral Argument, Zoom Court Scribes (July 29, 2020).

<sup>82</sup> Pl.’s Resp. to Def. McCarthy’s Mot. ¶ 8, at 2-3.

<sup>83</sup> Oral Argument, Zoom Court Scribes (July 29, 2020).

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*



other person making a sale shall either directly or by the agency of another, become a purchaser thereat, the sale will be set aside.<sup>86</sup>

This section advises that if a plaintiff—who is customarily the creditor—, a purchaser, or an office conducting the sheriff’s sale engages in misconduct, then a court is justified in setting the sale aside. *Woolley* further states that if the sheriff or individual conducting the sale purchases the property at auction, then a court must set the sale aside. To exemplify the type of misconduct envisioned, *Woolley* cites to *Booth v. Webster*.<sup>87</sup>

In *Booth v. Webster*, a sheriff conducting a sale simultaneously acted as a secret bidder for his son and purchased the property at auction.<sup>88</sup> The Delaware Superior Court held that a sheriff is prohibited from selling land to himself.<sup>89</sup> The court reasoned that not only is such a sale inherently suspicious, when a sheriff acts as a secret bidder there is no way of establishing the normal responsibilities of a bidder.<sup>90</sup> The court explained that “[i]f [the sheriff] makes a bid secretly for his son, and it turns out a bad purchase, there is nothing by which [the sheriff] can be made to return it sold.”<sup>91</sup>

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<sup>86</sup> 2 Victor B. Woolley, *Woolley’s Practice in Civil Actions* § 1108 (1985).

<sup>87</sup> 5 Del. 129, 129 (Super. Ct. 1848).

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

McCarthy does not allege that the sheriff or Plaintiff engaged in any misconduct during the sale.<sup>92</sup> More importantly, McCarthy does not allege that Haronis, or his agent, engaged in misconduct as the purchaser.<sup>93</sup> Instead, she maintains that it is the potential for fraud that disqualifies a property owner from bidding on his property at a sheriff's sale.<sup>94</sup> However, the Court does not believe that an owner purchasing his property at a sheriff's sale amounts to the same inherently suspicious behavior referenced in *Woolley* and described in *Booth*.

As purchaser, Haronis and his agent were still bound to the responsibilities of a bidder. The Court does not believe Haronis as property owner and bidder received any unfair advantage at the sheriff's sale. McCarthy does not explain how Haronis' status as property owner and bidder compromises the integrity of the auction process. Although McCarthy accurately avers that under ordinary circumstances junior liens attached to a property are extinguished once the property is sold at auction,<sup>95</sup> McCarthy's fraud argument is purely theoretical. In this case, Haronis' bid satisfies all liens attached to the property and no junior liens have been extinguished.<sup>96</sup> The Court will not base its decision on hypothetical facts.<sup>97</sup>

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<sup>92</sup> See Def. Iris McCarthy's Mot. to Set Aside Sheriff's Sale.

<sup>93</sup> *Id.*

<sup>94</sup> Def. Iris McCarthy's Mot. to Set Aside Sheriff's Sale ¶ 10, at 3.

<sup>95</sup> *Id.*; *E. Sav. Bank, FSB v. CACH, LLC*, 55 A.3d 344, 348 (Del. 2012), *on reargument*, 2012 WL 9298300 (Del.).

<sup>96</sup> Oral Argument, Zoom Court Scribes (July 29, 2020).

<sup>97</sup> The Court will address the issue of what happens to junior lien holders when a property owner purchases his property at a sheriff's sale if and when that issue comes before the Court. See *XI Specialty Ins. Co. v. WMI*

Nevertheless, the Court finds it important to note that, contrary to what McCarthy suggests, the Court does not believe a reasonable property owner would intentionally default on a senior lien with the sole purpose of extinguishing junior liens. Not only does a foreclosure have negative consequences to the owner, there is no guarantee they would be the successful bidder for the property at an auction where the public, including the lien holder, is permitted to bid. Even though McCarthy's fraud scenario is possible, the Court believes that a property owner who is at risk of losing their property most often does not place themselves in such a predicament intentionally. Furthermore, if fraud or misconduct like that argued by McCarthy is found, the Court always has the discretion to set aside the sale.

The Court cannot fathom a reasonable explanation for entitling creditors to purchase the property to protect their investment but barring property owners from redeeming their property to preserve their interest. Creditors and property owners are not significantly dissimilar to permit such an outcome; typically, creditors and property owners have both invested time and money into the property. Thus, the Court believes that logic and fairness permits a property owner facing a judgment foreclosure to redeem their property to protect their interest especially when creditors are entitled to purchase the property to do the same.

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*Liquidating Tr.*, 93 A.3d 1208, 1217 (Del. 2014) (explaining that "Delaware courts decline to exercise jurisdiction over a case unless the underlying controversy is ripe, i.e., has 'matured to a point where judicial action is appropriate.' That principle is sometimes expressed in terms of the adage that Delaware courts do not render advisory or hypothetical opinions.").

Additionally, Plaintiff accurately avers that no case law or secondary source forbids a property owner from bidding at a sheriff's sale. In fact, *American Jurisprudence* and *Corpus Juris Secundum* maintain that property owners may bid at a sheriff's sale to retain ownership.<sup>98</sup> Delaware's neighboring state, amongst others, permit property owners to bid at a sheriff's sale.<sup>99</sup> In New Jersey, where there is no collusion to defraud mortgagors, a property owner may bid at a sheriff's sale.<sup>100</sup> The New Jersey Superior Court's Chancery Division reasoned that (1) there is no New Jersey law or equitable principle prohibiting a property owner from bidding, (2) lien holders can bid to protect their interest, and (3) the property owners were simply trying to keep their home.<sup>101</sup>

Because the Court finds no law prohibiting property owners from bidding at a sheriff's sale to redeem title to their real property, the Court believes that Haronis—as property owner—was entitled to purchase the Property at the sheriff's sale. Perhaps not feasible in reality, but in theory, the Court notes that McCarthy could have done the same. The Court appreciates that McCarthy stands to lose ownership of the Property and may face eviction. However, the Court does not believe an injustice has occurred such that the Court must set the sale aside. Absent

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<sup>98</sup> 55 Am. Jur. 2d *Mortgages* § 669 (2020); 59A C.J.S. *Mortgages* § 803 (2020).

<sup>99</sup> See *Holland v. Fulbert, Inc.*, 371 N.Y.S.2d 509, 512 (1975); *Green v. United States*, 434 F. Supp. 2d 1116, 1119 (D. Utah 2006); *Fifth Third Mortg., Co. v. Rankin*, 2012 WL 2366469, at \*7 (Ohio Ct. App. 4d 2012).

<sup>100</sup> *Mooney v. Provident Sav. Bank*, 705 A.2d 816, 820 (N.J. Super. Ch. Div. 1997), *aff'd*, 318 N.J. Super. 257, 723 A.2d 634 (App. Div. 1999).

<sup>101</sup> *Id.*

claims of fraud, misconduct, injustice, or irregularity in the sale, the Court will not set aside the sheriff's sale. None are present here.

### **III. Reasonableness of Attorney's Fees**

#### **A. Standard of Review**

Generally, in Delaware, each litigant is responsible for their own attorney's fees.<sup>102</sup> However, if statute or contract provides that an unsuccessful litigant is responsible for opposing counsel's fees, the litigant will be obligated to pay.<sup>103</sup> This, of course, is not without restriction. The Court must "determine whether the fees requested are reasonable."<sup>104</sup> In making its determination, the Court must consider the following factors presented in the Delaware Lawyers' Rules of Professional Conduct:<sup>105</sup>

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent.<sup>106</sup>

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<sup>102</sup> *Mahani v. Edix Media Grp., Inc.*, 935 A.2d 242, 245 (Del. 2007).

<sup>103</sup> *Maurer v. Int'l Re-Ins. Corp.*, 95 A.2d 827, 830 (Del. Ch. 1953).

<sup>104</sup> *Mahani*, 935 A.2d at 245.

<sup>105</sup> *Id.* at 246; *Gen. Motors Corp. v. Cox*, 304 A.2d 55, 57 (Del. 1973).

<sup>106</sup> Del. Lawyers' Rules of Prof'l Conduct R. 1.5(a)(1).

The Court should also consider whether the number of hours billed are “excessive, redundant, duplicative or otherwise unnecessary.”<sup>107</sup>

## **B. Discussion**

First and foremost, Plaintiff asserts that it is entitled to reasonable attorney’s fees under the Homeowners’ Association’s Code of Regulations.<sup>108</sup> Haronis does not contest Plaintiff’s entitlement to reasonable attorney’s fees.<sup>109</sup> However, Haronis believes Plaintiff’s attorney’s fees are unreasonable.<sup>110</sup> Over two years, from initiation of the suit until the date of the sheriff’s sale, Plaintiff’s counsel’s bill totals \$30,642.23, nearly eight times the amount of the HOA fees.<sup>111</sup> Haronis asks the Court to stay confirmation of the sheriff’s sale to assess whether Plaintiff’s requested fees are reasonable.<sup>112</sup>

Haronis argues that “the reasonable person would not incur legal fees of over \$30,000.00 to pursue a \$4,000.00 judgment.”<sup>113</sup> Haronis notes that the opening bid was \$41,000, to which Haronis’ counsel—on Haronis’ behalf—bid \$41,001.<sup>114</sup> Subsequently, Plaintiff placed a \$65,000 bid that Haronis believes may have been to

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<sup>107</sup> *Mahani*, 935 A.2d at 247–48.

<sup>108</sup> Pl.’s Resp. to Def. Haronis’ Mot. to Stay Confirmation of Sale Pending Determination of Reasonableness of Attorney’s Fees, ¶ 8, at 4 [hereinafter “Pl.’s Resp. to Def. Haronis’ Mot.”].

<sup>109</sup> See Def. Haronis’ Mot. to Stay Confirmation of Sale.

<sup>110</sup> Def. Haronis’ Mot. to Stay Confirmation of Sale ¶ 30, at 8.

<sup>111</sup> Pl.’s Resp. to Def. Haronis’ Mot. ¶ 20, at 11.

<sup>112</sup> Def. Haronis’ Mot. to Stay Confirmation of Sale ¶ 30, at 8.

<sup>113</sup> *Id.* at 10.

<sup>114</sup> *Id.* ¶ 28, at 7.

establish a “reserve for attorney’s fees yet to be incurred.”<sup>115</sup> Nevertheless, Haronis acknowledges that an equally plausible explanation is that Plaintiff sought to “purchase the Property outright and sell [it] for a profit.”<sup>116</sup> Haronis also asserts that because of the fee shifting agreement, “Plaintiff had zero incentive to monitor its legal bills so as not to incur in [sic] excessive legal fees and costs.”<sup>117</sup> Haronis concludes that by incurring such attorney’s fees, “Plaintiff elevated itself to a position to be able to take the Property, knowing that such fees would impose a great burden to both Defendants.”<sup>118</sup>

To the contrary, Plaintiff argues that considering the procedural history and length of this case, Plaintiff’s attorney’s fees are reasonable.<sup>119</sup> Specifically, Plaintiff contends that the parties are in their second year of litigation for an uncontested Judgment.<sup>120</sup> Plaintiff emphasizes that McCarthy engaged in an aggressive litigation strategy that resulted in Plaintiff’s having to litigate in three courts—the Justice of Peace court, bankruptcy court, and now the Superior Court of Delaware.<sup>121</sup>

Moreover, Plaintiff notes that Haronis’ only argument in opposition to Plaintiff’s attorney’s fees is that there was a contractual fee shifting provision that

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<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> *Id.* at 9.

<sup>118</sup> *Id.*

<sup>119</sup> Pl.’s Resp. to Def. Haronis’ Mot. ¶ 3, at 1-2.

<sup>120</sup> *Id.*

<sup>121</sup> *Id.* at ¶ 3, at 1-2; ¶ 6, at 3.

allegedly offered Plaintiff no incentive to monitor its attorney costs.<sup>122</sup> Despite the fee shifting provision, Plaintiff asserts that it was never guaranteed to recover its attorney's fees as exemplified by McCarthy's bankruptcy proceeding and Defendants' nonpayment of the Judgment.<sup>123</sup> Plaintiff also argues that it did not have an incentive to incur attorney's fees because such costs disrupted Plaintiff's annual budget and the other homeowners paid the price as their Homeowner's Association fees increased.<sup>124</sup> Plaintiff also asserts that the Judgment amount is not a reliable litmus test for determining the reasonableness of attorney's costs.<sup>125</sup> Plaintiff explains that regardless of the amount sought to be collected, time and money must be spent to collect debts owed.<sup>126</sup>

Touching on the relevant factors listed in the Delaware Lawyers' Rules of Professional Conduct, Plaintiff's counsel first maintains that although the issues were not novel, counsel spent 145 hours over more than two years litigating in three courts, one of which was a specialized court that required significant expertise.<sup>127</sup> Additionally, Plaintiff's counsel contends that it did not excessively, redundantly, or unnecessarily incur costs; in fact, counsel asserts that to save fees it delegated a large portion of the work to paralegals and law clerks.<sup>128</sup> Moreover, counsel contends that

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<sup>122</sup> *Id.* ¶ 11, at 5-6.

<sup>123</sup> *Id.*

<sup>124</sup> *Id.* ¶ 12, at 6.

<sup>125</sup> *Id.* ¶ 17, at 8.

<sup>126</sup> *Id.* ¶ 17, at 8-9.

<sup>127</sup> *Id.* ¶ 14, at 7.

<sup>128</sup> *Id.* ¶ 15, at 7.



the fixed hourly rate charged is “similar to that of comparable attorneys in each court respectively.”<sup>129</sup> Noting that Plaintiff and counsel have had a ten year professional relationship, Plaintiff argues that their relationship suggests that the attorney’s fees are reasonable.<sup>130</sup> Next, Plaintiff maintains that counsel is a long time member of the Delaware bar whose firm is well known for its practice.<sup>131</sup> Particularly, undersigned counsel has been a litigator for thirty years<sup>132</sup> and is a partner at his firm.<sup>133</sup>

At first glance, because this case stems from a straightforward default Judgment, Plaintiff’s attorney’s fees appear unreasonable. However, as the Court takes a closer look, the Court understands that for a relatively simple Judgment this case has been protracted. The Court acknowledges that after having taken the appropriate steps in the Justice of Peace court, Plaintiff was dragged into bankruptcy court which derailed the normal course of litigation for about seven months.<sup>134</sup> In bankruptcy court, Plaintiff’s counsel filed four motions, totaling almost 100 pages, and appeared for the hearings associated with such motions.<sup>135</sup> The Court recognizes that Plaintiff was also required to file responses to the motions presented to this

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<sup>129</sup> *Id.* ¶ 15, at 8; ¶ 20, at 10-11.

<sup>130</sup> *Id.* ¶ 18, at 9.

<sup>131</sup> *Id.* ¶ 19, at 10.

<sup>132</sup> *Id.*

<sup>133</sup> Morton, Valihura, & Zerbato, *Attorney’s Profiles*, at <https://www.mvzllc.com/attorney-profiles/> (last visited December 13, 2020).

<sup>134</sup> McCarthy filed for bankruptcy in January of 2019, and Plaintiff was able to transfer its Judgment to the Superior Court in August of 2019. Def. Haronis’ Mot. to Stay Confirmation of Sale ¶ 14, at 4; ¶ 18, at 5.

<sup>135</sup> Def. Haronis’ Mot. to Stay Confirmation of Sale, Ex. C, U.S. Bankruptcy Ct. Docket, at 4, 7, 8, 18-19.

Court and attend the corresponding hearings.<sup>136</sup> Thus, under factor one, the Court appreciates that while the issues here are not novel or difficult, the amount of time and labor Plaintiff's counsel spent to collect Plaintiff's Judgment cannot be deemed unreasonable.

Under the third and eighth factor, the Court notes that Plaintiff's counsel charged a fixed rate which on average amounted to \$211 per hour—<sup>137</sup> a rate well below the hourly rate charged by partners at a firm.<sup>138</sup> This is not an unreasonable amount for counsel work assuming that appropriate reductions have been taken for work performed by paralegals or clerks. Considering factor four, Plaintiff's counsel received the Judgment desired and continued, over the past two years, to attempt to enforce the Judgment up until the Property was sold. The delay in resolving this issue and the increase in expenses related thereto is directly related to the conduct of Defendants.

In addition, the Court recognizes that “[t]he fact that the amount of attorney's fees [counsel] requests exceeds the amount of judgment awarded has no bearing on the determination of whether the request for attorney's fees in this case is

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<sup>136</sup> *Saunders-Gomez v. Rutledge Maint. Corp.*, 2016 WL 764123, at \*2 (Del. Com. Pl.), *aff'd*, 2017 WL 1277682 (Del. Super.), *aff'd*, 189 A.3d 1288 (Del. 2018) (noting that although the breach of contract claim for unpaid HOA fees was straightforward, defendant “engaged in extensive motion practice, which required [opposing counsel] to prepare responses and attend multiple hearings on behalf of [plaintiff].” Concluding that “[t]he amount of time and labor [opposing counsel] spent litigating this matter was more than reasonable,” and granting attorney's fees of \$8,975.83 charged for a two day trial).

<sup>137</sup> The total attorney's fees, \$30,642.23, divided by the 145 total hours billed is \$211.33 per hour.

<sup>138</sup> *Archie v. Robin Drive Auto, LLC*, 2019 WL 2635734, at \*2 (Del. Com. Pl.); *Saunders-Gomez*, 2016 WL 764123, at \*2 (finding \$200 per hour was a reasonably reduced competitive rate considering counsel's twenty years of experience).

reasonable.”<sup>139</sup> Although the amount of the original Judgment is significantly less than Plaintiff’s counsel’s fees, the Court emphasizes that a seemingly routine default Judgment became remarkably contentious, requiring more time and labor and thus more attorney’s fees. While the Court is concerned that the fee shifting provision could create a free ride to unreasonable billing by less than principled counsel, there is nothing to suggest such inappropriate conduct occurred here. The Court finds that the relevant factors for assessing the reasonableness of attorney’s fees in this case all weigh in Plaintiff’s favor and finds their counsel’s fees to be reasonable.

However, even with this finding, the Court believes it would be inappropriate and unfair to force Haronis to pay for the legal activity in the bankruptcy court. He was not involved in those proceedings, was not the cause of those billings, and all of those expenses relate solely to the conduct of McCarthy. Therefore, the Court finds that Haronis is liable for the fees associated with the litigation in the Justice of the Peace Court and in the Superior Court leading up to the sheriff’s sale. Counsel for Plaintiff should provide to Haronis’ counsel an accounting of the fees unassociated with the bankruptcy proceeding, and any dispute of the reasonableness of a particular billing can be subsequently brought to the Court’s attention. Plaintiff will have to look to McCarthy for attorney fees associated with the bankruptcy proceedings. The Motion to Stay Confirmation of the Sale is denied, and the sale is hereby confirmed.

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<sup>139</sup> *Saunders-Gomez*, 2016 WL 764123, at \*2.

#### **IV. Motion to Withdraw As Counsel**

Counsel for McCarthy has requested that the Court allow him to withdraw as counsel. He asserts that he has not been paid for his services and due to the litigation posture of the case no party will be prejudiced by his withdrawal.<sup>140</sup> Counsel for Plaintiff and Haronis have filed letters with the Court indicating they do not object to the motion.<sup>141</sup> The Court believes that the decision rendered by the Court has ended this dispute as the sale of the property has been confirmed and the lien can be paid. The Court agrees that there is no additional reasonable action to be taken by Mr. Abbott on behalf of his client and grants his motion.

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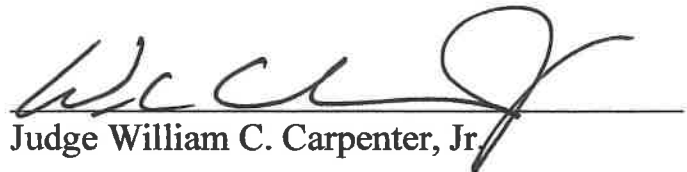
<sup>140</sup> Richard Abbott, Esquire's Mot. to Withdraw As Counsel ¶¶ 2, 4 at 1-2.

<sup>141</sup> Letter to Judge Carpenter From Robert Valihura, Esq. RE Pl. Takes No Position With Respect to Mr. Abbott's Mot. to Withdraw As Counsel for Def. McCarthy, D.I. 27, at 1; Letter to the Honorable William C. Carpenter, Jr. From Amy D. Brown, Esq. RE No Position on Richard L. Abbott's Mot. to Withdraw As Counsel, D.I. 28, at 1.

**V. Conclusion**

For the foregoing reasons, McCarthy's Motion to Set Aside Sheriff's Sale is **DENIED**, Haronis' Motion to Stay Confirmation of Sale Pending Determination of Reasonableness of Attorney's Fees is **DENIED**, Plaintiff's Motion to Strike Haronis' Motion to Stay Confirmation of Sale Pending Determination of Reasonableness of Attorney's Fees is **DENIED**, and Richard L. Abbott, Esquire's Motion to Withdraw As Counsel is **GRANTED**. The sale of the property is confirmed.

**IT IS SO ORDERED.**



Judge William C. Carpenter, Jr.